CF0000110033

Division Bench (Civil)

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR (M.P)

M.P.No. 2141 /87

PETITIONERS : Dinesh Kumar Mehta,
S/o Shri Ramnik Lal Mehta,
aged about 24 years,
R/o, Mehta-Nivas,
Indira-Market,
Durg (M.P)

- V E R S U S -

RESPONDENTS : 1) State of Madhya-Pradesh
through : Managing-Director,
M.P.State Marketing Federation,
Bhopal (M.P).

2) Durg Marketing Society Ltd.,
Kisan Rice Mill,
Dhamadha Naka, Durg (M.P)
through : President,

Received Copy of Petition Annexures and Stay Application
Section Officer 21-7-87
Advocate General Office
Jabalpur

PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA FOR WRITS IN THE NATURE OF CERTIORARI, MANDAMUS, PROHIBITION AND FOR FURTHER APPROPRIATE DIRECTIONS.

A. Tamaskar,
ADVOCATE,
COURT OF M.P.

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आदेश पत्रक

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मामला क्रमांक WP 2151/87 **सन्** 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

14.6.2005

Mr. P. Diwakar, Sr. Counsel with Mr. Anup Mazumdar, counsel for the petitioner.

Mr. B.R. Ghosh, counsel for respondent No.2.

The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India questioning the legality and propriety of letter dated 11.7.1987 (Annexure P-6) whereby the auction of Shop No.1 in favour of the petitioner has been cancelled and 1/4th auction amount deposited by the petitioner has been forfeited by respondent No.2.

Brief facts leading to filing of this petition are that on 24.6.1987 respondent No.2 floated an advertisement in local newspaper Deshbandhu to the effect that 10 shops of respondent No.2 situated in front of District Hospital, Durg and National Highway No.6 shall be auctioned on 25.6.1987. As per terms & conditions of auction issued by respondent No.2 every person participating in the said auction was required to deposit Rs.5,000/- as security amount and as the petitioner wanted to participate in the said auction, therefore, he also deposited Rs.5,000/- as security amount with respondent No.2 on 25.6.1987 vide Annexure P-1. On the fateful day i.e. on 25.6.87 the auction commenced and being the highest bidder for Shop No.1 the auction of said shop was accepted in favour of the petitioner and accordingly, he deposited Rs.15,000/- vide receipt No.7307 (Annexure P-2) & Rs.28,000/- vide receipt No.7308 (Annexure P-3) on the same day. According to Condition No.20 of the terms & conditions of the auction the

(नीचे देखिये)

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President of the Marketing Committee was entitled to stop the auction and put the same for re-auction and as per Condition No.21 the President was also entitled to accept or reject the last bid.

The petitioner's case is that after depositing 1/4th amount of the bid i.e. Rs.48,000/- he was expecting communication from respondent No.2 about the acceptance of bid but no communication was received from respondent No.2 till 10.7.1987, therefore, he wrote a letter to respondent No.2 informing that since he has not received any letter of acceptance from their side therefore, he revokes his bid and requested for refund of 1/4th amount of the bid i.e. Rs.48,000/-. But to the utter surprise of the petitioner he was informed vide letter-dated 11.7.1987 that as he has failed to deposit the remaining balance amount of his bid within 15 days from the date of auction, therefore, 1/4th amount of bid deposited by him is forfeited. The petitioner's further case is that in order to make a valid contract it was necessary to communicate to the petitioner in express terms informing him that his highest bid has been accepted by the Society, but in absence of such a letter of acceptance from respondent No.2 they cannot hold the petitioner guilty of any breach and forfeit his Rs.48,000/- and the petitioner was entitled to withdraw his offer before acceptance of his bid by the Committee.

Return has been filed on behalf of respondent No.2 in which it has been mentioned that in response to the advertisement published by respondent No.2 in the newspaper the auction commenced on 25.6.1987 and as many as 14 persons participated in the auction process and before participating in the auction each

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of them had deposited Rs.5,000/- as security amount. The petitioner's bid remained highest for shop No.1 being Rs.1,91,000/-, same was accepted and in token thereof the petitioner had signed on the auction register in presence of the President & Vice President of the Society, which is evident from auction register Annexure R-3. Since the President of the Society accepted the bid of petitioner the contention of the petitioner that he expected that as per Condition No.21 that respondent No.2 will communicate to him about the acceptance of bid before expiry of 15 days is false. Respondent No.2 had written a letter No.18/87-88 dated 9.7.87 to the petitioner for depositing the balance amount within the time specified in terms & conditions of auction. It was also informed to the petitioner that if remaining balance amount is not deposited within time then 1/4th auction amount deposited on 25.6.1987 by him will be forfeited. The petitioner sent a registered notice to respondent No.2 which was duly replied by respondent No.2 vide letter dated 9.7.1987 and accepted the request of the petitioner that the rent of shop will not be taken from the petitioner till the auction of other 08 shops is taken place. Copy of the letter written by the petitioner and reply of respondent No.2 are Annexure R-5 & R-6. It has further been mentioned in the return that the petitioner had written a letter dated 10.7.87 and reply of same was sent by respondent No.2 vide letter dated 11.7.87 stating the reason of forfeiture of the amount.

I have heard learned counsel for the parties.

Learned counsel for the petitioner submitted that as per Condition No.16 of terms & conditions of auction the petitioner

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — ५ —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

immediately deposited 1/4th amount of bid on the same day and thereafter, as per Condition No.21 respondent No.2 was required to communicate to the petitioner the acceptance of auction and since the same was not communicated to the petitioner, the contract was not complete, therefore, the petitioner was not required to deposit the remaining balance amount within 15 days and that is why the petitioner wrote a letter on 15th day to respondent No.2 withdrawing his offer. Counsel for the petitioner further argued that merely acceptance of bid by the President of Society was not a valid acceptance of auction, as the Committee was required to communicate the acceptance of auction and then & then only the petitioner was required to deposit the balance amount. He further argued that it has been denied by the petitioner that the proceeding of auction bears the signature of the petitioner (Annexure R-3). Ultimately, counsel for the petitioner prayed for quashment of Annexure P-6.

On the other hand, learned counsel for respondent No.2 Mr. Ghosh argued that at the end of auction the highest bid of the petitioner was accepted, which is evident from Annexure R-3 which bears the signature of the President of Committee Tamra Dwhaj Sahu and also the petitioner. As such the petitioner was required to deposit the balance amount within 15 days which the petitioner failed to deposit, therefore, he is not entitled for the relief sought for and this petition is liable to be dismissed. He further argued that in view of provisions of Section 64 of the Cooperative Societies Act, 1960 since there is a dispute between the petitioner &

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respondent No.2, the petitioner ought to have referred the dispute to the Registrar, Cooperative Societies and in terms of sub-section (3) of Section 64 of the Act the decision given by the Registrar cannot be questioned in any court.

Having heard learned counsel for the parties, I have perused the relevant records and terms & conditions of the auction Annexure P-4.

It is evident from the record that before commencement of auction the bidders were made aware about the terms & conditions of auction, which has not been disputed by the petitioner also. The relevant conditions of the above terms & conditions of the auction in this case are Condition Nos.16 & 21. Condition No.16 envisages that *"a person in whose favour the bid is closed will be required to deposit in cash at the spot 1/4th of the premium amount and for that he will be entitled for a receipt. The remaining auction amount shall be deposited by the bidder within 15 days and if he failed to deposit the premium amount within 15 days the auction shall be cancelled and 1/4th premium amount deposited by the bidder shall be fortified. The bidder will not be entitled to take possession till he deposits the whole amount. Rent will start from 16th day from the date of auction whether the bidder starts the shop or not."* Condition No.21 envisages that *"the President of the Marketing Committee shall have the power to accept or reject the bid and Marketing Committee shall have absolute power to accept the auction."*

If we look into the auction papers along with these two conditions, as per Condition No.21 the President of Marketing

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Committee was entitled to accept or reject the bid and in this case the bid of the petitioner was accepted by the President at the spot which is evident from Annexure R-3 and this fact has been mentioned by the respondent No.2 in their return and same has not been denied by the petitioner. Now if we look into the Condition No.16 which in clear terms envisages that 1/4th auction amount was required to be deposited by the bidder at the end of auction and remaining balance amount was required to be deposited within 15 days. It further envisages that if bidder fails to deposit the remaining amount within 15 days then respondent No.2 will be entitled to cancel the auction and forfeit the 1/4th premium amount deposited by the bidder. In the first instance, Condition No.16 nowhere envisages that remaining 3/4th amount will be deposited only after acceptance of the bid or the auction, therefore, the contention of learned counsel for the petitioner that without acceptance of the bid or auction the petitioner was not required to deposit the remaining 3/4th amount as the contract was not complete is not sustainable. In my opinion the contract was complete, for the reason that through these terms and conditions an offer was made by the respondent Committee and in acceptance of the same the petitioner participated in the bid, his bid was accepted being the highest vide Annexure R-3, therefore the petitioner was required to deposit remaining 3/4th amount within 15 days from the date of auction and for that purpose it was not obligatory for respondent No.2 to send separate acceptance of bid to the petitioner. Even otherwise if the arguments of learned counsel for the petitioner

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is accepted, bid of the petitioner was accepted vide Annexure R-3, same bears the signature of the President of the Committee and the petitioner, as stated by respondent No.2 in the return. It has also been mentioned in the return that same was communicated to the petitioner at the spot.

Now, if we look into the Condition Nos.16 & 21 together it cannot be interpreted that remaining 3/4th premium amount was required to be deposited only after acceptance of the auction. The second part of Condition No.21 says that the Marketing Committee, Durg had absolute right for acceptance of the auction but it has nowhere mentioned that Committee was entitled to reject the auction when the bid was accepted by the President. Therefore, there is no merit in the argument advanced by counsel for the petitioner that respondent was entitled for remaining 3/4th premium amount only after acceptance of auction by the Marketing Committee. Even otherwise one day before the expiry of 15 days respondent No.2 informed the petitioner vide Annexure R-4 that his bid was accepted for Shop No.1 being highest, 1/4th amount of bid was deposited by him on the same day and it was further written that he should deposit the remaining 3/4th amount of bid by 10.7.1987 failing which 1/4th amount deposited by him shall be forfeited. Even in reply to the letter written by the petitioner on 29.6.1987 respondent No.2 informed the petitioner that auction of remaining 08 shops were stopped on account of not fetching sufficient price and for further proceeding in this regard the meeting of Committee is being convened very shortly. It was further made

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clear that the rent of the shop will be realized only after remaining 08 shops are auctioned.

In view of the above foregoing discussion, it is not necessary to express any opinion about the applicability of Section 64 of the Cooperative Societies Act, 1960.

In the result, the petition of the petitioner has no merit, same is liable to be dismissed and it is accordingly dismissed. Cost is made easy.

Sd/-
L.C.BHADOO
Judge

Roshanlr

(पीछे देखिये)